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7
8 **BEFORE THE**
DEPARTMENT OF CONSUMER AFFAIRS
9 **BUREAU OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. VN-2006-1384

12 JACQLYN DEE GROTHAUS-WELLANDER
Post Office Box 285
13 Medicine Lake, Montana 59247

FIRST AMENDED
A C C U S A T I O N

14 Vocational Nurse License No. VN 136887,

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Teresa Bello-Jones, J.D., M.S.N., R.N. (Complainant) brings this
20 Accusation solely in her official capacity as the Executive Officer of the Bureau of Vocational
21 Nursing and Psychiatric Technicians.

22 2. On or about July 22, 1987, the Bureau of Vocational Nursing and
23 Psychiatric Technicians (Bureau) issued Vocational Nurse License Number VN 136887 to
24 Jacqlyn Dee Grothaus-Wellander (Respondent). License Number VN 136887 will expire on
25 May 31, 2009, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Bureau under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2875 of the Business and Professions Code (Code) provides, in pertinent part, that the Bureau may discipline the holder of a vocational nurse license for any reason provided in Article 3 (commencing with section 2875) of the Vocational Nursing Practice Act.

5. Section 118(b) of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Bureau jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated. Under section 2892.1 of the Code, the Bureau may renew an expired license at any time within four years after the expiration.

6. Section 125.3 of the Code provides, in pertinent part, that the Bureau may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

7. Section 2878 of the Code states:

“The Board may suspend or revoke a license issued under this chapter [the Vocational Nursing Practice Act (Bus. & Prof. Code, 2840, et seq.)] for any of the following:

“(a) Unprofessional conduct, which includes, but is not limited to, the following:

....

“(6) Failure to report the commission of any act prohibited by this section.”

....

“(d) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violating of, or conspiring to violate any provision or term of this chapter [the Vocational Nursing Practice Act].”

1 “(e) Making or giving any false statement or information in connection with the
2 application for issuance of a license.”

3 “(f) Conviction of a crime substantially related to the qualifications, functions,
4 and duties of a licensed vocational nurse, in which event the record of the conviction shall be
5 conclusive evidence of the conviction.”

6

7 “(j) The commission of any act involving dishonesty, when that action is related
8 to the duties and functions of the licensee.”

9 8. Section 2878.5 of the Code states:

10 In addition to other acts constituting unprofessional conduct within the meaning
11 of this chapter [the Vocational Nursing Practice Act] it is unprofessional conduct for a person
12 licensed under this chapter to do any of the following:

13 “(a) Obtain or possess in violation of law, or prescribe, or except as directed by a
14 licensed physician and surgeon, dentist or podiatrist administer to himself or herself or furnish or
15 administer to another, any controlled substance as defined in Division 10 of the Health and
16 Safety Code, or any dangerous drug as defined in Section 4022.”

17 “(b) Use any controlled substance as defined in Division 10 of the Health and
18 Safety Code, or any dangerous drug as defined in Section 4022, or alcoholic beverages, to an
19 extent or in a manner dangerous or injurious to himself or herself, any other person, or the public,
20 or to the extent that the use impairs his or her ability to conduct with safety to the public the
21 practice authorized by his or her license.”

22 “(c) Be convicted of a criminal offense involving possession of any narcotic or
23 dangerous drug, or the prescription, consumption, or self-administration of any of the substances
24 described in subdivisions (a) and (b) of this section, in which event the record of the conviction is
25 conclusive evidence thereof.”

26 9. Section 490 of the Code provides, in pertinent part, that the Bureau may
27 suspend or revoke a license when it finds that the licensee has been convicted of a crime
28 substantially related to the qualifications, functions or duties of a licensed vocational nurse.

1 10. California Code of Regulations, title 16, section 2521, states:

2 “For the purposes of denial, suspension, or revocation of a license pursuant to
3 Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or
4 act shall be considered to be substantially related to the qualifications, functions or duties of a
5 licensed vocational nurse if to a substantial degree it evidences present or potential unfitness of a
6 licensed vocational nurse to perform the functions authorized by his license in a manner
7 consistent with the public health, safety, or welfare. Such crimes or acts shall include but not be
8 limited to those involving the following:

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10 “(c) Violating or attempting to violate, directly or indirectly, or assisting in or
11 abetting the violation of, or conspiring to violate any provision or term of Chapter 6.5, Division 2
12 of the Business and Professions Code.

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14 “(f) Any crime or act involving the sale, gift, administration, or furnishing of
15 ‘narcotics or dangerous drugs or dangerous device’ as defined in Section 4022 of the Business
16 and Professions Code.”

17 11. Section 11170 of the Health and Safety Code provides: “no person shall
18 prescribe, administer, or furnish a controlled substance for himself.”

19 12. Section 11173 of the Health and Safety Code states:

20 “(a) No person shall obtain or attempt to obtain controlled substances, or procure
21 or attempt to procure the administration of or prescription for controlled substances, (1) by fraud,
22 deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material fact.”

23 13. CONTROLLED SUBSTANCES

24 a. Cannabinoid, commonly referred to as marijuana, is a Schedule I
25 controlled substance as designated in Health and Safety Code section 11054(d)(13) and is
26 categorized as a dangerous drug pursuant to section 4022 of the Code.

27 b. Amphetamine is a Schedule II controlled substance as designated in
28 Health and Safety Code section 11055(d)(1) and is categorized as a dangerous drug pursuant to

1 section 4022 of the Code.

2 c. Benzodiazepine is a Schedule IV controlled substance as designated in
3 Health and Safety Code section 11057(d)¹ and is categorized as a dangerous drug pursuant to
4 section 4022 of the Code.

5 14. California Code of Regulations, title 16, section 2504, states:
6 "All persons holding a license from the Board shall file their current mailing address with the
7 Board at its office in Sacramento, and shall immediately notify the Board of any and all changes
8 of mailing address, within 30 days after the change, giving both their old and new addresses and
9 license number."

10 **FIRST CAUSE FOR DISCIPLINE**

11 (Conviction of Substantially Related Crimes)

12 15. Respondent is subject to disciplinary action under sections 2878,
13 subdivision (f) and section 490, as defined in California Code of Regulations, title 16, section
14 2521, in that Respondent was convicted of crimes substantially related to the qualifications,
15 functions or duties of a licensed vocational nurse, as follows:

16 a. On or about November 11, 1998, in the case entitled *The People of the*
17 *State of California v. Jacquelyn Dee Wellander* (Municipal Court of California, Santa Clara County
18 Judicial District, South County Facility, Case No. F9881105), Respondent was convicted of
19 violating Penal Code section 242/243(a) (battery), a misdemeanor. As a result of this conviction,
20 Respondent was sentenced to three years of probation and was ordered to pay a fine.

21 1.) The circumstances surrounding the conviction are that on or
22 about April 6, 1998, Respondent willfully and unlawfully used force and violence upon another
23 person.

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26 1. Health and Safety Code section 11057, subdivision (d) provides that any substance
27 listed in its sub-sections is a depressant regulated as a Schedule IV controlled substance. The
28 list provided at subdivision (d) includes several substances that are types of benzodiazepines,
including, but not limited to: clonazepam, diazepam, flunitrazepam, flurazepam, halazepam,
lorazepam, oxazepam, prazepam, quazepam, temazepam and zaleplon.

1 b. On or about May 16, 2006, in the case entitled *The People of the State of*
2 *California v. Jacqlyn Dee Wellander* (Superior Court of California, County of San Bernardino,
3 Needles District, Case No. FNE003799), Respondent was convicted by the Court on a plea of
4 nolo contendere to one count of violating Health and Safety Code section 11375(b)(2)
5 (possession of a controlled substance with intent to sell), a misdemeanor. As a result of this
6 conviction, Respondent was sentenced to three years of probation and was ordered to pay a fine.

7 1.) The circumstances surrounding the conviction are that on or
8 about June 15, 2003, a California Highway Patrol officer was dispatched to the site of a single
9 vehicle collision. Upon the officer's arrival at the scene, he observed Respondent, the driver of
10 the vehicle involved in the collision, laying on the highway motionless in the supine position
11 having been ejected from the vehicle due to the impact of the collision. Respondent was unable
12 to give a statement to the officer due to her injuries. The officer interviewed the three passengers
13 who had been riding in the vehicle Respondent was driving. All three passengers, two of which
14 were minors, had sustained severe to moderate injuries. Passenger 3, one of the two minors in
15 the vehicle, reported to the officer that he had witnessed Respondent smoking out of a glass pipe
16 prior to them leaving on their road trip but that he did not know what Respondent had been
17 smoking.

18 The officer observed that Respondent's lips were dark in color and appeared to be burned.
19 He also observed several puncture wounds on Respondent's left and right arms. The officer
20 recovered the following items while conducting an inventory at the scene:

- 21 (1) two (2) plastic vitamin bottles each containing 5.7 grams of marijuana located in
22 the glove compartment of the vehicle driven by Respondent
- 23 (2) one (1) clear plastic zippered bag containing white powder residue (which tested
24 positive for amphetamine) located in Respondent's make-up bag
- 25 (3) two (2) clear plastic zippered bags containing white powder residue (which tested
26 positive for amphetamine) located in the glove compartment of the vehicle driven
27 by Respondent
- 28 (4) two (2) brown prescription bottles containing a total of 19 white tablets labeled as

1 "cyclobenzaprine" prescribed to an individual other than Respondent located in
2 Respondent's purse

3 (5) one (1) brown prescription bottle containing a total of six (6) white tablets labeled
4 as "prednisone" prescribed to an individual other than Respondent located in
5 Respondent's purse

6 (6) one (1) brown cloth bag with rope ties labeled "NURSES WEEK MAY 6-12,
7 2002" containing two (2) glass smoking devices (commonly used for the
8 inhalation of controlled substances) with burnt residue in each device located in
9 Respondent's purse

10 (7) a plastic "pill crusher" located in Respondent's bag

11 (8) a yellow pipe with burnt marijuana located on the ground near the vehicle and

12 (9) a white metal spoon with burn marks on the bottom and sides and a bent handle
13 located in Respondent's suitcase.

14 A blood sample was drawn from Respondent's foot at the scene of the collision. It tested
15 positive for amphetamines, benzodiazepines and cannabinoids.

16 **SECOND CAUSE FOR DISCIPLINE**

17 (Administered Controlled Substances to Oneself)

18 16. Respondent is subject to disciplinary action under sections 2878,
19 subdivision (a) on the grounds of unprofessional conduct, as defined in section 2878.5,
20 subdivision (b) for violating Health and Safety Code section 11170, in that Respondent
21 administered to herself controlled substances, cannabinoids, amphetamines and benzodiazepines,
22 in a dangerous manner that caused injury to herself and to others, as more fully set forth in
23 paragraph 15, above.

24 **THIRD CAUSE FOR DISCIPLINE**

25 (Possessed Narcotic with Intent to Sell)

26 17. Respondent is subject to disciplinary action under section 490 for violating
27 California Code of Regulations, title 16, section 2521(f) in that Respondent was convicted of
28

1 being in possession of a controlled substance with intent to sell, as more fully set forth in
2 paragraph 15, above.

3 **FOURTH CAUSE FOR DISCIPLINE**

4 (Obtained or Possessed Controlled Substances)

5 18. Respondent is subject to disciplinary action under section 2878,
6 subdivision (a) on the grounds of unprofessional conduct, as defined in section 2878.5,
7 subdivision (a) for violating Health and Safety Code sections 11170 and 11173, in that
8 Respondent was in possession of controlled substances, cannabinoids, amphetamines and
9 benzodiazepines, as more fully set forth in paragraph 15, above.

10 **FIFTH CAUSE FOR DISCIPLINE**

11 (Unprofessional Conduct)

12 19. Respondent is subject to disciplinary action under section 2878,
13 subdivision (d) of the Code on the grounds of unprofessional conduct as defined in section
14 2878.5, subdivision (a) for violating Health and Safety Code sections 11170 and 11173 in that
15 Respondent was found to be in possession of controlled substances, cannabinoids, amphetamines
16 and benzodiazepines, without authority, as more fully set forth in paragraph 15, above.

17 **SIXTH CAUSE FOR DISCIPLINE**

18 (Commission of Any Act Involving Dishonesty)

19 20. Respondent is subject to disciplinary action under section 2878,
20 subdivisions (a) and (d) in that she failed to report to the Bureau the commission of prohibited
21 acts, as more fully set forth in paragraph 15, above.

22 **SEVENTH CAUSE FOR DISCIPLINE**

23 (Failure to Provide Notification of Change of Address)

24 21. Respondent is subject to disciplinary action under California Code of
25 Regulations, title 16, section 2504 in that Respondent failed to notify the Bureau of her new
26 mailing address within 30 days after she had changed addresses. The circumstances giving rise
27 to this cause of discipline are as follows:
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1 a. On or about October 24, 2005, the Bureau sent a letter to
2 Respondent requesting information regarding drug abuse allegations via certified mail with
3 return receipt. The letter was sent to the Bureau's address of record for Respondent: 122 Jessup
4 Road, Apartment 6104, Henderson, Nevada, 89074. On or about November 7, 2005, the letter
5 was returned to the Bureau stamped "return to sender, attempted, not known" and marked "notify
6 sender of new address" with the following address listed: 3770 Swenson Street, #K108, Las
7 Vegas, Nevada, 89119. On or about November 9, 2005, the Bureau sent the same or similar
8 letter to Respondent at the Swenson Street address. On or about July 5, 2006, having received no
9 response from Respondent, the Bureau sent another letter to Respondent requesting the same
10 information within thirty (30) days from the date of the letter. This third letter was sent to the
11 Jessup Road address (the address of record) via certified mail with return receipt. On or about
12 July 17, 2006, the letter was returned to the Bureau stamped "return to sender, attempted, not
13 known." On or about July 10, 2007, the Assistant Executive Officer of the Bureau, who also
14 serves as the Bureau's Custodian of Records, issued a license certification affirming that the
15 Jessup Road address continued to be Respondent's address of record at that time. On or about
16 July 2, 2008, the Bureau received an "Application for Renewal of License" from Respondent.
17 On it Respondent listed a new address in Medicine Lake, Montana. The Respondent's
18 "Application for Renewal" was the first address update the Bureau had been provided for
19 Respondent in several years.

20 **EIGHTH CAUSE FOR DISCIPLINE**

21 (Making False Statement in Connection with Application)

22 22. Respondent is subject to disciplinary action under section 2878,
23 subdivision (e) and (d) in that she failed to disclose her convictions on her Application for
24 Renewal of License as follows:

25 a. On or about June 30, 2008, Respondent completed an "Application
26 for Renewal of License". The application was received by the Bureau on July 2, 2008. On the
27 application the Respondent answered the following question in the negative, "Since you last
28 renewed your license have you ever been convicted or pled nolo contendere to any violation of

1 any law of any state in the United States or a foreign country? (You are required to list any
2 conviction that has been set aside and/or dismissed under Penal Code Section 1203.4.)” Despite
3 Respondent’s statement that she had not been convicted of any violation of any law, in truth and
4 in fact, in 2006 Respondent had been convicted of violating Health and Safety Code section
5 11375(b)(2) (possession of a controlled substance with intent to sell), a misdemeanor, as more
6 fully set forth in paragraph 15, above.

7 **PRAYER**

8 WHEREFORE, Complainant requests that a hearing be held on the matters herein
9 alleged, and that following the hearing, the Bureau of Vocational Nursing and Psychiatric
10 Technicians issue a decision:

- 11 1. Revoking or suspending Vocational Nurse License Number VN 136887,
12 issued to Jacqlyn Dee Grothaus-Wellander.
- 13 2. Ordering Jacqlyn Dee Grothaus-Wellander to pay the Bureau the
14 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
15 Professions Code section 125.3;
- 16 3. Taking such other and further action as deemed necessary and proper.

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18 DATED: _____
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22 TERESA BELLO-JONES, J.D., M.S.N., R.N.
23 Executive Officer
24 Bureau of Vocational Nursing and Psychiatric Technicians
25 State of California
26 Complainant